



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 18, 1998

Ms. Tenley Aldredge
Assistant County Attorney
County of Travis
P.O. Box 1749
Austin, Texas 78767

OR98-2239

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118148.

The Travis County Sheriff's Office received a request for information regarding case number 98-7812. You claim that the requested information is excepted from required public disclosure by section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Article 20.02 of the Code of Criminal Procedure makes confidential information revealing the substance of grand jury deliberations. Further, this office has concluded that the grand jury is an extension of the judiciary for purposes of the Open Records Act. Open Records Decision Nos. 433 (1986), 411 (1984). Information held by a grand jury, therefore, is not itself subject to the Open Records Act. When an individual or entity acts at the direction of a grand jury as the grand jury's agent, information held or collected by the agent is within the grand jury's constructive possession. Open Records Decision No. 513 (1988). It is not clear whether all of the information at issue here can be deemed to be within the constructive possession of the grand jury. You do not indicate that the grand jury formally requested or directed all of the district attorney's actions in this investigation. *See generally* Open Records Decision No. 398 (1983) (audit prepared at direction of grand jury is not public record). Consequently, you may withhold information obtained pursuant to grand jury subpoena and information collected at the express direction of the grand jury.

Additionally, for the remaining information, we note that section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

* * *

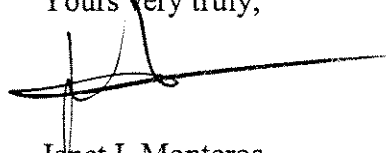
(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the requested information concerns a case that is currently pending prosecution. We find that you have shown that the release of the requested information, in this case the incident report, would interfere with the detection, investigation or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). Thus, we conclude that the remaining requested information may be withheld under section 552.108(a)(1). We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not

actually located on the front page of the offense report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', written over a horizontal line.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/nc

Ref: ID# 118148

Enclosures: Submitted documents

cc: Mr. Kevin Benz
KTBC-TV
119 East 10th Street
Austin, Texas 78701
(w/o enclosures)